STATE OF MICHIGAN

COURT OF APPEALS

STANLEY HOUGHTALING and JANET HOUGHTALING, Plaintiffs/Counter-Defendants-Appellees,	UNPUBLISHED June 24, 2010
v	No. 288335 Kent Circuit Court
MARY NOWAK, Defendant/Counter-Plaintiff/Third-Party Plaintiff-Appellant,	LC No. 05-011154-CH
v	
MARGARET JOHNSON, Third-Party Defendant-Appellee.	

Before: MARKEY, P.J., and ZAHRA and GLEICHER, JJ.

PER CURIAM.

In this dispute over easement rights, defendant/counter-plaintiff/third-party plaintiff Mary Nowak appeals as of right the trial court's opinion and order following a bench trial, which settled the parties' easement rights, enjoined Nowak from interfering with plaintiffs' easement rights, and dismissed Nowak's counterclaim and third-party claim. Nowak also appeals the trial court's order that denied her motion to amend court findings, to make additional findings, and to amend judgment. We affirm.

First on appeal, Nowak claims the trial court erred by implicitly recognizing that the Algoma Township quitclaim deed conveyed legal title. Nowak claims on appeal that the issue is preserved based on her counsel's assertion at the post-trial hearing on her motion to amend:

> While the court has issued its opinion impliedly recognizing that plaintiffs and third-party defendant acquired fee title as indicated by the language of the opinion, and by the quit claim deeds from the Township making it subject to certain uses and rights of way for all parties, with which opinion, I might indicate defendant [Nowak] respectfully disagrees.

Significantly, however, this assertion was absent from her written motion filed in the trial court on August 28, 2008. On appeal, Nowak cites no authority for the proposition that the oral assertion at the hearing is sufficient to preserve an issue for appellate review. Cf. *Vushaj v Farm Bureau Gen Ins Co of Michigan*, 284 Mich App 513, 519; 773 NW2d 758 (2009) ("Where an issue is first presented in a motion for reconsideration, it is not properly preserved."). Accordingly, we decline to consider the issue. *Royal Prop Group, LLC v Prime Ins Syndicate, Inc*, 267 Mich App 708, 721; 706 NW2d 426 (2005).[1]

Next on appeal, Nowak essentially objects to the trial court's findings that plaintiffs Stanley and Janet Houghtaling and third-party defendant Margaret Johnson did not interfere with her easement rights. We review de novo a trial court's ruling on an equitable matter. *Blackhawk Dev Corp v Dexter Village*, 473 Mich 33, 40; 700 NW2d 364 (2005). However, "[t]he extent of a party's rights under an easement is a question of fact, which this Court reviews for clear error." *Id.*

An easement is a right to use the land burdened by the easement rather than a right to occupy and possess the land as does the estate owner. *Schumacher v Dep't of Natural Resources*, 275 Mich App 121, 130; 737 NW2d 782 (2007). "An easement is a limited property interest that is confined, generally, to a specific purpose." *Id.* "The use of an easement must be confined to the purposes for which it was granted, including any rights incident to or necessary for the reasonable and proper enjoyment of the easement, which are exercised with as little burden as possible to the fee owner of the land." *Id.* at 131. "There must be a due and reasonable enjoyment by both parties—those who hold the dominant right, as well as those who own the fee." *Unverzagt v Miller*, 306 Mich 260, 265; 10 NW2d 849 (1943). "[T]he grantor of the easement of a right of way may use the way in any manner he sees fit, provided he does not unreasonably interfere with the grantee's reasonable use in passing to and fro." *Murphy Chair Co v American Radiator Co*, 172 Mich 14, 28-29; 137 NW 791 (1912).

---

[1] In any event, we could nonetheless conclude that Nowak's claim lacks merit. The quitclaim deed does not contain a reverter clause, the absence of which ordinarily controls against construction of a provision as a condition. *Huntington Woods v Detroit*, 279 Mich App 603, 627; 761 NW2d 127 (2008). See also *Quinn v Pere Marquette R Co*, 256 Mich 143, 151; 239 NW 376 (1931) ("[W]here there is no reverter clause, a statement of use is merely a declaration of the purpose of conveyance, without effect to limit the grant."). Because the deed grants land, and there is no reverter clause, the quitclaim deed conveyed the former owner's interest in the subject property without limitation. *Carmody-Lahti Real Estate, Inc*, 472 Mich at 371; *Quinn*, 256 Mich at 151. Accordingly, Algoma Township did not convey a greater property interest that it actually possessed in the subsequent quitclaim deed to the specified parcel owners. The "for roadway purposes" language in the previous quitclaim deed did not limit Algoma Township from executing a quitclaim deed that conveyed to specified parcel owners a portion of the subject property lying adjacent to their parcels subject to an easement for ingress and egress for the other parcel owners.

The question whether the Houghtalings or Johnson were interfering with Nowak's easement rights represented a question of fact for the trial court. See *Cantieny v Friebe*, 341 Mich 143, 146; 67 NW2d 102 (1954) (what constitutes a proper and reasonable use by a property owner, as well as what may be necessary to an easement owner's beneficial use and enjoyment, are questions of fact to be determined by the trial court or jury). We defer to a trial court's determinations of witness credibility at a bench trial. MCR 2.613(C); *In re Clark Estate*, 237 Mich App 387, 395-396; 603 NW2d 290 (1999).

The conveyance of the subject property was subject to an easement for purposes of ingress and egress for specified parcels, as well as being subject to easements for utilities. Other than the testimony of Nowak and her boyfriend Pat Miszewski, there is no indication that the Houghtalings or Johnson interfered with any of the parcel owners' easement rights. The trial court appropriately referenced the July 10, 2007 survey, to define the scope of the easement, where the 1995 quit claim deed provided no description. See *Blackhawk Dev Corp*, 473 Mich at 48 (a trial court may consider extrinsic evidence to determine the scope of the easement if the text of the easement is ambiguous). Contrary to Nowak's assertion on appeal, there is no language in either relevant deed that demonstrates that Leasure Drive constitutes the entire subject property. The survey clearly specifies the "gravel dr[ive] easement for ingress [and] egress." On the record, we conclude that the trial court's findings that the Houghtalings' and Johnson's use of their properties conveyed via quit-claim deed from Algoma Township did not interfere with ingress and egress of the other property owners were not clearly erroneous. See *Carmody-Lahti Real Estate, Inc*, 472 Mich at 377-378; *Blackhawk Dev Corp*, 473 Mich at 40.

In reaching a conclusion, we reject Nowak's argument that the entire property formerly conveyed to Algoma Township in 1975 should be used only "for roadway purposes." As previously discussed, this argument lacks merit. Further, we note that Nowak represents for the first time on appeal that Johnson erected a fence on Johnson's property in front of Nowak's garage. Nowak attaches two copies of photographs to demonstrate that fact. This constitutes an improper expansion of the record. *Sherman v Sea Ray Boats, Inc*, 251 Mich App 41, 56; 649 NW2d 783 (2002). Moreover, the photographs are of little value due to their poor quality. Ultimately, we will not review this issue, where it was not preserved. *Royal Property Group, LLC*, 267 Mich App at 721.

Nowak next asserts on appeal that she was denied equal owner's rights as enjoyed by the other parties to the area designated "for roadway purposes" in the 1975 deed to the township. Nowak specifically argues that "[b]y this decision, easterly lot owners, acquire property that apart from a narrowed easement (traveled portion), can be used for parking, storage and construction." However, as previously mentioned, "what constitutes a proper and reasonable use by a property owner, as well as what may be necessary to an easement owner's beneficial use and enjoyment, are questions of fact to be determined by the trial court or jury." See *Cantieny* 341 Mich at 146. The trial court did not abuse its discretion in finding the owners' uses reasonable.

We reject Nowak's contentions that Leasure Drive is a highway by user under MCL 221.20, and that the 1995 conveyance from Algoma Township to the parcel owners amounted to an unconstitutional taking. There is no indication that Leasure Drive is anything more than a private roadway. None of the elements to establish a public highway under the highway-by-user statute are present. See *Villadsen v Mason Co Rd Comm*, 268 Mich App 287, 292; 706 NW2d

897 (2005). Further, the case relied upon by Nowak to support her claim that the conveyance by Algoma Township to the parcel owners amounted to an unconstitutional taking is readily distinguishable. While Algoma Township apparently vacated its interest in the subject property and Leasure Drive, Nowak and the other parcel owners were not deprived of ingress and egress. See *Forster v City of Pontiac*, 56 Mich App 415, 420-421; 224 NW2d 325 (1974).

Finally, Nowak complains that the trial court abused its discretion by denying her post-trial motion to amend the language of the permanent injunction. A trial court's decision regarding injunctive relief and motions to amend judgment are reviewed for an abuse of discretion. *Taylor v Currie*, 277 Mich App 85, 93; 743 NW2d 571 (2007); *Barnard Mfg Co, Inc v Gates Performance Engineering, Inc*, 285 Mich App 362, 381-382; 775 NW2d 618 (2009). An abuse of discretion occurs when a trial court chooses an outcome that is outside a range of reasonable and principled outcomes. *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006).

On appeal, Nowak objects to the language of the temporary restraining order and preliminary injunction, which was later incorporated by reference into the August 7, 2008 opinion and order and made permanent. The injunction prohibits Nowak from interfering with the Houghtalings' easement rights, namely their use of that portion of the easement over parcel four that connects their concrete driveway with Leasure Drive. Nowak agreed to the language of the temporary restraining order. The purpose was, and is, to prevent Nowak and her confederates from engaging in conduct, as evidenced at trial, which prevents the Houghtalings from using the easement to access their parcel. It does not deprive Nowak of her easement rights for ingress and egress under the terms of the 1995 quit-claim deed. The elements for an injunction were satisfied in this case, and Nowak on appeal does not dispute the necessity of an injunction in this case. See *Higgins Lake Property Owners Ass'n v Gerrish Twp*, 255 Mich App 83, 106; 662 NW 2d 387 (2003). We reject Nowak's attempt to diminish her culpability in this case by asking the trial court to impose the permanent injunction on all parties when the evidence adduced at trial demonstrated that only she and Miszewski interfered with any other parcel owners' easement rights. An injunction is a suitable remedy in a case where a party's use of an easement constitutes a continuing trespass for which damages would be difficult to measure. *Schadewald v Brule*, 225 Mich App 26, 40; 570 NW2d 788 (1997). Ultimately, the temporary restraining order and preliminary injunction issued on January 6, 2006, reaffirmed on April 5, 2006, and incorporated into the August 7, 2008 opinion and order as a permanent injunction comports with MCR 3.310(C),[2] and did not amount to an abuse of discretion. *Pontiac Fire*

---

[2] MCR 3.310(C) provides:

> An order granting an injunction or restraining order
>
> (1) must set forth the reasons for its issuance;
>
> (2) must be specific in terms;
>
> (3) must describe in reasonable detail, and not by reference to the
>
> (continued…)

Fighters Union Local 376 v City of Pontiac, 482 Mich 1, 8; 753 NW2d 595 (2008). The trial court's denial of Nowak's motion to amend on this point, therefore, did not amount to an abuse of discretion. *Barnard Mfg Co, Inc*, 285 Mich App at 381-382.

Affirmed.

/s/ Jane E. Markey
/s/ Brian K. Zahra
/s/ Elizabeth L. Gleicher

(…continued)

> complaint or other document, the acts restrained; and
>
> (4) is binding only on the parties to the action, their officers, agents, servants, employees, and attorneys, and on those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.